IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

Crl.MC.No. 2128 of 2007()

CC.1434/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, PATHANAMTHITTA

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PETITIONER: PETITIONER/ACCUSED:

P.V. REMADEVI,
ANIL BHAVAN, KOIPURAM P.O. (R.D. CONSULTANCY),
CHENGANNOOR.

BY ADV. SRI.JOHN BRITTO
SRI.C.A.RAJEEV

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE:

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1. M/S. SREE GOKULAM CHIT &
FINANCE CO. P. LTD. NO.66, ARCOT ROAD,KODAMBAKKAM,
CHENNAI, HAVING ITS BRANCH OFFICE AT CHENGANNUR,
REPRESENTED BY POWR OF ATTORNEY HOLDER, V.J.JOHN,
VETTUMANNIL HOUSE, VAYYATTUPUZHA P.O., CHITTAR.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2128 of 2007

Dated this the 5th day of July 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. She was found guilty, convicted and sentenced by the trial court. The appellate court set aside the trial court's judgment and sent the matter back to the trial court for fresh disposal, with observations.

2. When the matter came up before the learned Magistrate for fresh disposal, PW2 was examined and a document was marked as Ext.P8. It is submitted that the said witness was not cross-examined and Ext.P8 document was not challenged at all. At the defence stage, the petitioner filed Annexure 3 application to call for certain documents. That prayer was objected to and by the impugned order (copy of which is produced as Annexure 5), the learned Magistrate dismissed the petition filed by the petitioner calling for documents. The petitioner claims to be aggrieved by the said order.

3. I shall carefully avoid any expression of opinion on merits about the acceptability of the rival contentions on merits. The learned counsel for the petitioner submits that subsequently an application has been filed to recall PW2 and to cross-examine him to challenge Ext.P8 and also to challenge other aspects. That petition has already

been allowed. It is submitted that, in these circumstances, this Criminal Miscellaneous Case may now be closed, making it clear that if, after cross-examination of PW2, the petitioner wants any further documents to be produced, the petitioner shall be at liberty to make such application and the learned Magistrate must dispose of the same on merits. I am satisfied that the said request can be accepted. It is further prayed that it may be clarified that observations in Annexure 5 will not in any way fetter the rights of the petitioner to claim drawal of an adverse inference under Section 114(g) of the Evidence Act.

4. I need not now express any opinion on the availability of the presumption under Section 114(g) of the Evidence Act. Suffice it to say that the observations in Annexure 5 will not in any way fetter the rights of the petitioner to raise all relevant and necessary contentions at appropriate later stages before the learned Magistrate.

5. With the above observations, this Criminal Miscellaneous Case is allowed in part.

Hand over copy of this order to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007